

## **ARTICLE VII**

### **Section 1. BOARD OF ADJUSTMENT:**

- a. The Board of Selectmen shall appoint a Board of Adjustment.
- b. Board of Adjustment: Such local legislative body shall provide for the appointment of a Board of Adjustment and in regulations and restrictions adopted pursuant to the authority hereof shall provide that the said Board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.
- c. Members of Board, Term, Vacancies: The Board of Adjustment shall consist of five (5) members. On the date of the expiration of the terms of the present members of any Board of Adjustment the appointing authority shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years and one (1) member for a term of five (5) years. Said members shall be removable by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term.
- d. Meetings of the Board, etc: The Board shall adopt rules in accordance with the provisions of the ordinances. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.
- e. Appeals to Board: Appeals to the Board of Adjustment may be taken by any person aggrieved of by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the records upon which the action appealed from was taken.

- f. Effect of Appeal: An appeal stays all proceedings under the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by the Superior Court on notice to the officer from whom the appeal is taken and cause shown.
- g. Appeals to Board: Notice of Hearing: The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as notice to the parties in interest and decide the same within a reasonable time. Upon hearing any party may appear in person or by agent or attorney.
- h. Powers of Board: The Board of Adjustment shall have the following powers:
  - I. To hear and decide appeals where it is alleged there is an error in any requirement, decision or determination made by an administrative official in the enforcement hereof of any ordinance adopted pursuant thereto.
  - II. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.
  - III. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.
  - IV. In exercising the above mentioned powers such board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, or decision, as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
  - V. The concurring vote of three members of the board shall be necessary to reverse any action of such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

- i. Disqualification of Board Member: No member of the Board of Adjustment shall sit upon the hearing of any question which the board is to decide in a judicial capacity who would be disqualified from any cause, except exemption from service and knowledge of the facts involved gained in the performance of his official duties, to act as a juror upon the trial of the same matter in any action at law. If a member shall be disqualified or unable to act in any particular case pending before the board the appointing authority, upon application of the board, shall appoint a member to act in his place upon said case.
- j. Appeals to Court: Any person aggrieved by any decision of the Board of Adjustment, or any decision of the legislative body of such municipality in regard to its plan of zoning, or any taxpayer, or any officer, department, board, or bureau of the municipality, may apply to the Superior Court, within thirty days after the action complained of has been recorded, by a sworn petition, setting forth that such decision is illegal or unreasonable, in whole or in part, specifying the grounds upon which the same is claimed to be illegal or unreasonable.
- k. Appeals to Court - Procedure: The court shall direct the record in the matter appealed from to be laid before it, hear the evidence and make such order approving, modifying or setting aside the decision appealed from as justice may require, and may make a new order as a substitute for the order of the board. The filing of the petition shall not stay proceedings upon the decision appealed from, but the court may, on application, notice to the board and on cause shown, grant a restraining order.
- l. Appeals to Court - Certifying Record: An order of court to send up the record may be complied with by filing either the original papers or duly certified copies thereof, or of such portions thereof as the order may specify, together with a certified statement of such other facts as show the grounds of the action appealed from.
- m. Appeals to Court - Hearing, etc: The court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his findings of fact and conclusions of law.
- n. Appeals to Court - Costs: Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.
- o. Speedy Hearing: All proceedings under this subdivision shall be entitled to a speedy hearing.
- p. Remedies for Violations: In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or any building structure, or land in violation hereof or of any ordinance or other regulation made under authority conferred hereby. The proper local authorities of

the municipality, in addition to other remedies may institute any appropriate action or proceedings to prevent such unlawful action to restrain, correct, or abate such violation, to prevent the occupancy of the buildings, structure or land, or any illegal act or use in or about such premises.

- q. Conflicting Provisions: Whenever the regulations made under the authority hereof differ from those prescribed by any statute, ordinance, or other regulation, that provision which imposes the greater restriction or higher standard shall govern.